

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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UNITED STATES OF AMERICA, : CASE NO. 1:18-cr-0043  
:  
Plaintiff, : STATUS VIDEOCONFERENCE  
vs. :  
: 3rd of May, 2021  
YANJUN XU, also known as XU : 12:29 P.M.  
YANJUN, also known as QU HUI, :  
also known as ZHANG HUI, :  
:  
Defendant. :

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE

- - -

APPEARANCES:

For the Plaintiff:

Timothy S. Mangan, Esq.  
Emily N. Glatfelter, Esq.  
Assistant United States Attorneys  
221 East Fourth Street, Suite 400  
Cincinnati, Ohio 45202

For the Defendant:

Robert K. McBride, Esq.  
Ralph William Kohnen, Esq.  
Sanna-Rae Taylor, Esq.  
Jeanne Marie Cors, Esq.  
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425 East Walnut Street, Suite 1800  
Cincinnati, Ohio 45202

Law Clerk: Cristina V. Frankian, Esq.

Courtroom Deputy: Rebecca Santoro

Stenographer: Lisa Conley Yungblut, RDR, RMR, CRR, CRC  
United States District Court  
100 East Fifth Street  
Cincinnati, Ohio 45202

Proceedings recorded in stenotype.

Transcript produced with computer-aided transcription.

1 (Videoconference at 12:29 p.m.)

2 THE COURT: Good afternoon. This is Judge Timothy  
3 S. Black on the record on the criminal docket in the case of  
4 United States versus Xu, 1:18-cr-43. We're here for another  
5 conference by videoconference as docketed. I'd like to  
6 begin by having the attorneys enter their appearances for  
7 the record, but before I inquire, let me indicate that my  
8 career law clerk, Cristina Frankian, is in the conference  
9 with us, as is my courtroom deputy, Rebecca Santoro.

10 Ms. Lisa Conley Yungblut is the court reporter.

11 And, Ms. Yungblut, thank you for your work again today.

12 STENOGRAPHER: Yes, Your Honor. Thank you.

13 THE COURT: And she has indicated her presence and  
14 participation.

15 So who appears, for the record, on behalf of the  
16 plaintiff, the government, the United States?

17 MR. MANGAN: Your Honor, this is Tim Mangan on  
18 behalf of the government along with Emily Glatfelter.

19 THE COURT: Good morning, Mr. Mangan. Good  
20 morning, Ms. Glatfelter.

21 And who appears on behalf of the defendants? If  
22 defense counsel would unmute one's self, I'm prepared for  
23 you to enter your appearances.

24 MR. KOHNEN: Sorry, Judge. Ralph Kohnen on behalf  
25 of the defendant, Mr. Xu, as well, Your Honor.

1 MR. McBRIDE: And Bob McBride on behalf of the  
2 defendant, Mr. Xu, Your Honor. Good afternoon.

3 THE COURT: Good afternoon.

4 MS. TAYLOR: Good afternoon.

5 THE COURT: Good afternoon, Ms. Taylor.

6 Is there another participant?

7 MS. CORS: Good afternoon, Your Honor. This is  
8 Jeanne Cors on behalf of Mr. Xu.

9 THE COURT: Don't be shy. Good afternoon, Ms.  
10 Cors.

11 Is there anybody out on the video that has not  
12 entered their appearance? Very well. We have a quorum.

13 Let me kick this off with a statement, and then I  
14 anticipate listening carefully to each side in due course.  
15 At the last conference, the Court, this Judge, inquired  
16 about a two-week continuance, at which time the government  
17 advised that recent complications may actually necessitate  
18 the government to seek a longer continuance.

19 Based on my understanding, the government has  
20 encountered difficulties in obtaining evidence located  
21 overseas as well perhaps as contacting and securing travel  
22 for witnesses who reside overseas. And unless I  
23 misapprehend, these difficulties are caused or exacerbated  
24 by the global pandemic. So we set today's conference in  
25 order for the defense to confer with their client and the

1 government to follow up on their particular issues and for  
2 the parties to generally confer regarding a continuance.

3 I was advised this morning that both sides are  
4 available for a trial commencing mid October but note that  
5 defendant objects to any continuance; although, he  
6 recognizes that the Court may continue the matter regardless  
7 and toll time under the Speedy Trial Act.

8 In that regard, the Speedy Trial Act allows for the  
9 automatic exclusion of time pursuant to 18 U.S.C. Section  
10 3161(h) (3) for, quote: "Any period of delay resulting from  
11 the absence or unavailability of the defendant or an  
12 essential witness," end quote. And, quote,  
13 "unavailability," end quote, is defined under that section  
14 as an essential witness whose, quote, "whereabouts are known  
15 but his presence for trial cannot be obtained by due  
16 diligence or he resists appearing at or being returned for  
17 trial," end quote.

18 Additionally, to the extent that the government  
19 seeks time to obtain evidence, review it, prepare it for  
20 disclosure, and for the defense to then review that  
21 evidence, the Court can also extend time, can also extend  
22 its ends of justice finding due to the nature and complexity  
23 of the prosecution and to offer adequate time for  
24 preparation.

25 But, first, I would ask the government to

1 memorialize its request for the continuance and specify its  
2 basis for needing a continuance, and then I will hear from  
3 the defense as to its objections or anything further. So on  
4 behalf of the government, will one of you be responsive?

5 MR. MANGAN: Yes, Your Honor. This is Tim Mangan.  
6 Following up on the comments I made at the prior conference  
7 last week, we would be requesting a continuance because we  
8 have made a request through an MLAT process to the Republic  
9 of France for testimony from several individuals. We are  
10 still awaiting a response to that MLAT request. So pursuant  
11 to the Speedy Trial Act and the provisions cited, both  
12 related to the availability of witnesses and as well as to  
13 requests to foreign government, we would ask for a  
14 continuance on that basis.

15 THE COURT: And you're comfortable with a date in  
16 mid October?

17 MR. MANGAN: We are, Your Honor, yes.

18 THE COURT: Very well. Does the defense wish to be  
19 heard, please?

20 MR. KOHNEN: Your Honor, the only thing that I  
21 would ask perhaps for the benefit of the record which we all  
22 share is that Mr. Mangan share a little more detail with us  
23 on exactly who those witnesses or that witness is or at  
24 least some description of how they qualify as essential  
25 witnesses for that ground of the Court's finding.

1           THE COURT: I don't think that's an unreasonable  
2 request. Is the government in a position now to respond?

3           MR. MANGAN: We can, Your Honor. This request  
4 pertains to what's been described in other briefings as the  
5 Safran Aviation hacking, and I can go into greater detail  
6 about what that entails. But essentially, there was an  
7 incident that we are alleging that the defendant, Mr. Xu,  
8 was involved in as far as coordinating and participating in  
9 the malware hacking of Safran Aviation through an employee  
10 of Safran. What we are seeking in the MLAT is the testimony  
11 of the individual whose laptop was compromised as well as  
12 another company representative who can help substantiate  
13 some of the context regarding some of the other participants  
14 as well as authenticate any other evidence that's needed  
15 relative to that hacking.

16           So that is the substance of the issue that we  
17 intend to present as part of our case in chief, and having  
18 witnesses from Safran, they are essential to that particular  
19 part of our case. And so, Your Honor, we would submit that  
20 this does qualify as an essential witness to our case.

21           THE COURT: And where are they located?

22           MR. MANGAN: In France, and the company is based in  
23 France. In order for us to work through the company, we  
24 need to ask the government of France for their permission to  
25 sort of go through that process, and so right now, we are

1 waiting on the government of France to give us that  
2 permission in order to start the process with the witnesses.

3 THE COURT: Very well. Was that sufficiently  
4 responsive, in your opinion, Mr. Kohnen?

5 MR. KOHNEN: Absolutely it is, Your Honor. Thanks,  
6 Tim.

7 THE COURT: You're speaking --

8 MR. KOHNEN: Tim Mangan.

9 THE COURT: Very well. Either side need to be  
10 heard further on the calendar issue before the Court acts  
11 now, from the government? Does the government need to be  
12 heard further before I act on the issue of the calendar now?

13 MR. MANGAN: No, Your Honor. No, Your Honor.  
14 Thank you.

15 THE COURT: Very well. And the defense?

16 MR. KOHNEN: No, thank you, Your Honor.

17 THE COURT: Very well. Well, the Court continues  
18 the trial, jury trial, to October 18th, 2021, because I was  
19 advised that, although the defendants object to any  
20 continuance, their attorneys are available, and the  
21 government attorneys are available as well, and the timing  
22 is appropriate given the government's presentation. So I  
23 continue the matter for jury trial until October 18th, 2021.

24 The Court finds that the government has indicated  
25 the unavailability of, it sounds like, two essential

1 witnesses, and, accordingly, time is automatically tolled to  
2 afford adequate time to secure the witnesses' appearances.  
3 Time is also tolled because, additionally, the Court finds  
4 that, despite diligent efforts, the government requires  
5 additional time to obtain, review, and disclose evidence  
6 located abroad and witnesses.

7 And the defense, in turn -- bear with me. May not  
8 need to put on this ends of justice, but just to double it  
9 up, the Court finds that, despite diligent efforts, the  
10 government requires additional time to obtain, review, and  
11 disclose evidence and witnesses located abroad. Defendants  
12 will require time perhaps to review. Additionally, the  
13 Court confirms and continues to find that due to the  
14 complexity of the case and the nature of the prosecution,  
15 it's unreasonable to expect adequate preparation for the  
16 trial within the time limits established under the Speedy  
17 Trial Act. And so the Court makes an ends of justice  
18 finding on that basis and time will be tolled until the new  
19 trial date.

20 I appreciate your presentations. Is there more we  
21 need to discuss today from either side, from the government?

22 MR. MANGAN: Your Honor, I think the only question  
23 would be what the rest of the calendar would look like in  
24 terms of deadlines. We can certainly work that out by  
25 e-mail with Ms. Frankian, if you would like.



1 THE COURT: Yeah, I would propose you work it out  
2 with Mr. Kohnen's team, and Ms. Frankian will be responsive  
3 to you all in that regard. I'm glad you raised the issue.

4 Does the defense wish to be heard on anything  
5 further at this time?

6 MR. KOHNEN: No, Your Honor. Thank you.

7 THE COURT: Very well. Will you give me a moment,  
8 please?

9 Very well. I appreciate you timely participating  
10 in this conference, and I am going to adjourn by leaving  
11 the meeting, and I want you to stay well. Take care. I'm  
12 leaving the meeting and adjourning the conference. Goodbye.

13 (Proceedings concluded at 12:44 p.m.)

14 **C E R T I F I C A T E**

15 I certify that the foregoing is a correct transcript of  
16 the record of proceedings in the above-entitled matter  
prepared from my stenotype notes.

17 /s/ Lisa Conley Yungblut 05/05/2021  
18 LISA CONLEY YUNGBLUT, RDR, RMR, CRR, CRC DATE

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